

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN ASSEMBLY MAY 11, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1775

Introduced by Assembly Member ~~Furutani~~ *Members Furutani and Block*

(Coauthors: Assembly Members Ammiano, Arambula, ~~Block~~, Brownley, Carter, Eng, Hayashi, and Torlakson)

February 9, 2010

An act to amend Section 37222 of, to add Sections 37222.10, 37222.11, 37222.12, 37222.13, 37222.14, and 37222.15 to, and to repeal Section 37222.5 of, the Education Code, and to add Section 6722 to the Government Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1775, as amended, Furutani. Public schools: Fred Korematsu Day of Civil Liberties and the Constitution.

Existing law requires the Governor to proclaim certain days each year for specified reasons. Existing law also designates particular days each year as having special significance in public schools and educational institutions and encourages those entities to conduct suitable commemorative exercises on those dates.

This bill would require the Governor annually to proclaim January 30 as Fred Korematsu Day of Civil Liberties and the Constitution, would designate that date of each year as having special significance in public

schools and educational institutions, and would encourage those entities to observe that date by conducting exercises remembering the life of Fred Korematsu and recognizing the importance of preserving civil liberties.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature in enacting
2 this act to do all of the following:
3 (1) Declare January 30 the Fred Korematsu Day of Civil
4 Liberties and the Constitution.
5 (2) Emphasize the constitutional rights afforded to all Americans
6 regardless of race or ancestry, particularly the rights to due process
7 and life, liberty, and property that are guaranteed by the Fifth and
8 Fourteenth Amendments of the United States Constitution.
9 (3) Uphold the civil liberties of all citizens that are granted by
10 the United States and California Constitutions, especially in times
11 of real or perceived crisis.
12 (b) The Legislature finds and declares all of the following:
13 (1) During World War II, Fred Korematsu was arrested and
14 convicted for defying the exclusion order at a time when persons
15 of Japanese ancestry, including United States citizens, were ordered
16 to live in concentration camps. Four decades later, Korematsu's
17 wrongful conviction was overturned by Judge Marilyn Hall Patel
18 of the United States District Court *for the Northern District of*
19 *California*. In granting Mr. Korematsu's petition for writ of error
20 coram nobis, Judge Patel acknowledged in her decision that "a
21 grave injustice was done to American citizens and resident aliens
22 of Japanese ancestry who, without individual review or any
23 probative evidence against them, were excluded, removed and
24 detained by the United States during World War II." Judge Patel
25 further stated, "[Korematsu] stands as a caution that in times of
26 distress the shield of military necessity and national security must
27 not be used to protect governmental actions from close scrutiny
28 and accountability. It stands as a caution that in times of
29 international hostility and antagonisms our institutions, legislative,
30 executive, and judicial, must be prepared to exercise their authority

1 to protect all citizens from the petty fears and prejudices that are
2 so easily aroused.”

3 (2) Fred Korematsu’s lifelong pursuit of justice on his own
4 behalf and for countless others is uniquely symbolic of the founding
5 ideals and traditions of our State and Nation. He remained a tireless
6 advocate for, and is an enduring symbol of, every American’s right
7 to liberty, due process, and equality without regard to race,
8 ethnicity, or national origin.

9 (3) In 1942, Gordon K. Hirabayashi and Minoru Yasui also
10 defied the curfew imposed on United States citizens and permanent
11 residents of Japanese ancestry. In 1943, Hirabayashi and Yasui
12 were also wrongfully convicted and denied justice by the United
13 States Supreme Court.

14 (4) The Fifth Amendment and the Fourteenth Amendment of
15 our United States Constitution both guarantee a right to due
16 process. These rights were violated when United States citizens
17 and permanent residents of Japanese ancestry were denied the
18 fundamental rights to notice of any criminal charges, the right to
19 attorneys, and the right to a trial. Korematsu, Hirabayashi, and
20 Yasui each took a principled stand at great personal sacrifice in
21 protesting government sanctioned discrimination based on racial
22 heritage and ancestry.

23 (5) Fred Korematsu was born in Oakland, California, on January
24 30, 1919, to Japanese immigrant parents. Upon graduation from
25 Castlemont High School in 1937, Fred Korematsu wanted to serve
26 his country in the military and attempted to enlist in the United
27 States National Guard and the United States Coast Guard, but was
28 rejected because his Selective Service classification had been
29 changed to “Enemy Alien,” even though he was a citizen of the
30 United States.

31 (6) Fred Korematsu attended the Master School of Welding and
32 worked at the docks in Oakland as a shipyard welder, quickly
33 rising through the ranks to foreman until his union barred all people
34 of Japanese ancestry and his employment was terminated. When
35 World War II broke out, Fred Korematsu suffered from acts of
36 discrimination, as he was turned away from restaurants and barber
37 shops, and denied the right to work, travel, and ultimately to reside
38 in his native State of California.

39 (7) In 1942, Fred Korematsu refused to comply with Civilian
40 Exclusion Order No. 34 which was authorized by President

Franklin D. Roosevelt's Executive Order No. 9066. It imposed strict curfew regulations and required over 100,000 United States citizens and permanent residents of Japanese ancestry to leave their homes on the West Coast and submit to imprisonment based solely on their ancestry. Rather than reporting to the assembly center with the rest of his family, Fred Korematsu chose to defy the order and decided to carry on his life as an American citizen and a citizen of the State of California.

(8) Fred Korematsu was arrested on May 30, 1942, and charged with violating the military's exclusion order. While spending two and one-half months in the Presidio stockade prison in San Francisco, the Executive Director of the American Civil Liberties Union of Northern California, Ernest Besig, offered to defend him. Fred Korematsu was tried and convicted by a federal court and taken by military authorities to the Tanforan ~~Relocation~~ *Assembly Center* in San Bruno, California, where he lived in squalor. After spending several months at Tanforan, a former horse racing track, Korematsu and his family were sent to the Topaz concentration camp in Utah. Believing the discriminatory conviction went against freedoms guaranteed by the Constitution, Fred Korematsu appealed his case. Though the appeal went up to the United States Supreme Court in 1944, justice was denied to Fred Korematsu when the Supreme Court upheld the conviction by a six to three vote, leaving him devastated and wondering what effect this would have on other Americans.

(9) Tens of thousands of Japanese American soldiers fought in Europe, North Africa, and the Pacific during World War II and served with indomitable spirit and valor, including those in the 442nd Infantry, the 100th Infantry Battalion, the 522nd Field Artillery Battalion, the Military Intelligence Service, the 232nd Combat Engineer Company, and the 1399th Engineer Construction Battalion. The 442nd Infantry of the United States Army was a combat team composed primarily of Japanese American soldiers who fought in Europe. Some members of the 442nd were recruited directly from the concentration camps, and many others had relatives that were incarcerated in the camps. Grouped together as the 442nd Regimental Combat Team, the unit became the most decorated unit in United States military history for its size and length of service, receiving seven Presidential Unit Citations, 21

1 Medals of Honor, 52 Distinguished Service Crosses, 560 Silver
2 Stars, 4,000 Bronze Stars, and numerous additional distinctions.

3 (10) Following World War II and the release of Japanese
4 Americans from the concentration camps, Fred Korematsu
5 attempted to resume life as an American citizen, marrying his wife
6 Kathryn and raising two children, Karen and Ken. He maintained
7 his innocence through the years, but the conviction had a lasting
8 impact on Fred Korematsu's basic rights, affecting his ability to
9 obtain employment.

10 (11) In 1982, with newly discovered evidence found by Peter
11 Irons, a legal historian and attorney, and Aiko Yoshinaga-Herzig,
12 a researcher, Fred Korematsu made the decision to reopen his 1944
13 conviction by petitioning for a writ of error coram nobis to have
14 the wrongful conviction vacated. The task of retrying a legal case
15 based on events 40 years past was complicated and novel, but a
16 pro bono legal team composed mostly of Sansei (third generation
17 Japanese Americans) was determined to undo the injustice
18 perpetrated on Fred Korematsu and their own family members
19 who were imprisoned along with Korematsu. Similarly, Minoru
20 Yasui and Gordon K. Hirabayashi also petitioned for writs of error
21 coram nobis in Oregon and Washington. Fred Korematsu's
22 attorneys worked closely with the legal teams assembled for the
23 Minoru Yasui and Gordon K. Hirabayashi cases. These pro bono
24 teams were also composed primarily of Sansei, and together the
25 attorneys for the three cases developed the legal strategies that
26 would prove successful in defending the civil rights of Fred
27 Korematsu, Minoru Yasui, Gordon K. Hirabayashi, and all
28 Americans.

29 (12) The writ of error coram nobis has been extremely limited
30 in application, but has been used by courts once an individual has
31 been convicted and released in order to correct a court's
32 fundamental error or to reverse a manifest injustice. For Fred
33 Korematsu, the fundamental errors at the Supreme Court level
34 were the suppression, alteration, and destruction of evidence by
35 United States government officials that Japanese Americans were
36 not disloyal nor were predisposed to espionage and sabotage, as
37 had been argued by the government in the Korematsu, Hirabayashi,
38 and Yasui cases, and that no facts warranted the issuance of the
39 military orders and Executive Order No. 9066. Thus, Fred

1 Korematsu's lawyers argued that a fraud on the Supreme Court
2 had been committed, resulting in Fred Korematsu's conviction.

3 (13) After litigating for nearly a year in the United States District
4 Court for the Northern District of California, Fred Korematsu and
5 his legal team emerged triumphant on November 10, 1983, when
6 Judge Marilyn Hall Patel announced from the bench her decision
7 granting the petition for the writ of error coram nobis to overturn
8 Fred Korematsu's conviction. The written decision was published
9 on April 19, 1984.

10 (14) The decision by Judge Patel influenced petitions for writ
11 of error coram nobis in the United States District Courts of Oregon
12 and Washington, where Minoru Yasui and Gordon K. Hirabayashi
13 successfully filed to have their wrongful convictions vacated. The
14 coram nobis decisions in these cases impaired the precedent of the
15 original Supreme Court cases which validated the curfew and
16 exclusion orders. In addition, the decisions influenced Congress'
17 passage of the Civil Liberties Act of 1988.

18 (15) The Civil Liberties Act of 1988 was signed into law by
19 President Ronald Reagan and recognized the grave injustice that
20 was done to United States residents and citizens of Japanese
21 ancestry by the forced relocation and incarceration of civilians
22 during World War II. Congress acknowledged that the incarceration
23 of these Japanese Americans occurred because of racial prejudice,
24 wartime hysteria, and a failure of political leadership. The apology
25 extended on behalf of the United States was also intended to make
26 more credible and to be consistent with any expressions of concern
27 by the United States over violations of human rights committed
28 by other nations.

29 (16) On January 15, 1998, Fred Korematsu was awarded the
30 Presidential Medal of Freedom. The Presidential Medal of Freedom
31 is the highest honor bestowed upon a civilian who has made a
32 particularly meritorious contribution to the nation's interests.

33 (17) On June 11, 1998, Fred Korematsu received the first
34 California Senate Medal.

35 (18) Fred Korematsu continued his efforts to ensure that
36 Americans do not forget the lessons learned from our own history
37 as he traveled across the country, speaking at various colleges, law
38 schools, and other organizations. He received honorary doctorates
39 from the University of San Francisco, California State University,
40 East Bay (formerly California State University, Hayward),

1 McGeorge School of Law, and the City University of New York
2 Law School. Fred Korematsu shared his story and encouraged
3 others to speak up when faced with injustice.

4 (19) After September 11, 2001 (9/11), Korematsu continued to
5 speak out. In 2003, he filed a “Friend-of-the-Court” brief with the
6 United States Supreme Court on behalf of Muslim inmates being
7 held at Guantanamo Bay, warning that the government’s extreme
8 national security measures were reminiscent of the past. In 2004,
9 he filed a similar brief on behalf of an American Muslim man
10 being held in solitary confinement without a trial in a United States
11 military prison.

12 (20) Fred Korematsu’s life was the basis for the Emmy
13 award-winning 2001 Public Broadcasting Service documentary
14 “Of Civil Wrongs and Rights: The Fred Korematsu Story,”
15 coproduced by Eric Paul Fournier and Fred Korematsu’s son, Ken
16 Korematsu. The coram nobis cases were also the subject of an
17 Oscar nominated film, “Unfinished Business” directed by Steven
18 Okazaki.

19 (21) A true civil liberties hero was lost on March 30, 2005, when
20 Fred Korematsu passed away at 86 years of age due to respiratory
21 illness in San Rafael, California, leaving behind a lasting influence
22 on the importance of maintaining the constitutionally mandated
23 guarantee of liberty for all Americans.

24 (22) On April 18, 2009, Seattle University School of Law
25 opened the Fred T. Korematsu Center for Law and Equality.

26 (23) On April 30, 2009, the Asian Law Caucus in San Francisco
27 officially launched the Fred T. Korematsu Institute for Civil Rights
28 and Education. The mission of the institute is to advance pan-ethnic
29 civil rights issues, in a post-9/11 context, through education,
30 leadership development, and activism. Fred Korematsu’s daughter,
31 Karen Korematsu, helped found the Korematsu Institute. She is
32 active in advancing her father’s legacy as a member of the
33 Institute’s Steering Committee and as a speaker at universities and
34 organizations across the country.

35 ~~(24) On December 15, 2009, the San Leandro School Board in~~
36 ~~a unanimous decision named the new 9th grade campus the San~~
37 ~~Leandro High School, Fred T. Korematsu Campus. In November~~

38 (24) In November 2005, an elementary school at Mace Ranch
39 in Davis, California, was renamed the Fred T. Korematsu
40 Elementary School at Mace Ranch. In November 2006, the

1 Discovery Academy elementary school in Oakland, California,
2 was renamed the Fred T. Korematsu Discovery Academy. *On*
3 *December 15, 2009, the governing board of the San Leandro*
4 *Unified School District, in a unanimous decision, named the new*
5 *9th grade campus the San Leandro High School Fred T. Korematsu*
6 *Campus.*

7 (25) In 1988, two new streets in San Jose, California, were
8 named Korematsu Court and Hirabayashi Drive.

9 (26) Fred Korematsu's life and his willingness to assert that our
10 civil liberties are the hallmark of our great country have left an
11 indelible mark on the history of our nation and holds a special
12 meaning for the people of California.

13 SEC. 2. Section 37222 of the Education Code is amended to
14 read:

15 37222. (a) On each day designated and set apart as a day
16 having special significance, all public schools and educational
17 institutions are encouraged to observe that day and to conduct
18 suitable commemorative exercises.

19 (b) It is the intent of the Legislature that the exercises
20 encouraged by this section be integrated into the regular school
21 program, and be conducted by the school or institution within the
22 amount otherwise budgeted for educational programs.

23 SEC. 3. Section 37222.10 is added to the Education Code, to
24 read:

25 37222.10. (a) The second Wednesday in May of each year is
26 designated and set apart as the Day of the Teacher, a day having
27 special significance pursuant to Section 37222.

28 (b) On the Day of the Teacher, all public schools and educational
29 institutions are encouraged to conduct exercises commemorating
30 and directing attention to teachers and the teaching profession.

31 SEC. 4. Section 37222.11 is added to the Education Code, to
32 read:

33 37222.11. (a) April 21 of each year is designated and set apart
34 as John Muir Day, a day having special significance pursuant to
35 Section 37222.

36 (b) On John Muir Day, all public schools and educational
37 institutions are encouraged to conduct exercises stressing the
38 importance that an ecologically sound natural environment plays
39 in the quality of life for all of us, and emphasizing John Muir's

1 significant contributions to the fostering of that awareness and the
2 indelible mark he left on the State of California.

3 SEC. 5. Section 37222.12 is added to the Education Code, to
4 read:

5 37222.12. (a) April 6 of each year is designated and set apart
6 as California Poppy Day, a day having special significance pursuant
7 to Section 37222.

8 (b) On California Poppy Day, all public schools and educational
9 institutions are encouraged to conduct exercises honoring the
10 California Poppy, including instruction about native plants,
11 particularly the California Poppy, and the economic and aesthetic
12 value of wildflowers; promoting responsible behavior toward our
13 natural resources and a spirit of protection toward them; and
14 emphasizing the value of natural resources and conservation of
15 natural resources.

16 SEC. 6. Section 37222.13 is added to the Education Code, to
17 read:

18 37222.13. (a) May 22 of each year is designated and set apart
19 as Harvey Milk Day, a day having special significance pursuant
20 to Section 37222.

21 (b) On Harvey Milk Day, all public schools and educational
22 institutions are encouraged to conduct exercises remembering the
23 life of Harvey Milk, recognizing his accomplishments, and
24 familiarizing pupils with the contributions he made to this state.

25 SEC. 7. Section 37222.14 is added to the Education Code, to
26 read:

27 37222.14. (a) March 30 of each year is designated and set
28 apart as Welcome Home Vietnam Veterans Day, a day having
29 special significance pursuant to Section 37222.

30 (b) On Welcome Home Vietnam Veterans Day, all public
31 schools and educational institutions are encouraged to conduct
32 exercises recognizing the contributions of all those involved in the
33 Vietnam War and remembering the sacrifices they made for their
34 country.

35 SEC. 8. Section 37222.15 is added to the Education Code, to
36 read:

37 37222.15. (a) January 30 of each year is designated and set
38 apart as Fred Korematsu Day of Civil Liberties and the
39 Constitution, a day having special significance pursuant to Section
40 37222.

1 (b) On Fred Korematsu Day of Civil Liberties and the
2 Constitution, all public schools and educational institutions are
3 encouraged to conduct exercises remembering the life of Fred
4 Korematsu and recognizing the importance of preserving civil
5 liberties, even in times of real or perceived crisis.
6 SEC. 9. Section 37222.5 of the Education Code is repealed.
7 SEC. 10. Section 6722 is added to the Government Code, to
8 read:
9 6722. The Governor annually shall proclaim January 30 as
10 Fred Korematsu Day of Civil Liberties and the Constitution.

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